

ASSOCIATION OF LEGAL PROFESSIONALS ~ ALP

March 12, 2013

Debra Figone
City Manager
CITY OF SAN JOSE
200 E. Santa Clara St., 17th Floor
San Jose, CA 95113

Sent by email attachment

Re: City-ALP Negotiations

Dear Ms. Figone:

We continue to be disappointed at the City's bullying and uncaring approach to its labor relations. You heard us address the City's recent lack of communication with ALP this morning. Attached is the City's e-mail response insisting on mediation tomorrow. The City's approach shows a true lack of respect for its labor force.

The last negotiating session between the City and ALP occurred on February 20, 2013. The City has never responded to ALP's outstanding proposals. Instead, on February 25, 2013, Mr. Mercado sent the ALP negotiating team a tentative meeting invitation to "hold" tomorrow, March 13, for mediation.

No one on ALP's negotiating team has ever accepted the tentative "hold" invitation for advisory mediation. To the contrary, ALP sent Mr. Mercado written correspondence on at least 2 different occasions that ALP believed mediation is premature and requested responses to its outstanding tentative agreement proposals.

On February 25, 2013, ALP submitted to Mr. Mercado two proposed tentative agreements. One proposed tentative agreement (Tentative Agreement 2) contains the 34 provisions on which ALP believes the parties are in agreement, including folding in the provisions in Tentative Agreement 1 that was executed by the parties. The other proposed tentative agreement (Tentative Agreement 3) attempts to provide a basis for the parties to reach agreement on the remaining 8 outstanding provisions. With regard to the City's mediation request, ALP's February 25 cover letter very clearly requested clarification as to whether the City was declaring impasse. It also very clearly stated that ALP believed the parties could reach agreement on some, if not all, of the outstanding provisions.

The following day, February 26, 2013, ALP submitted to Mr. Mercado correspondence directly addressing the City's mediation request. ALP expressly requested that - in order to maximize the effectiveness of mediation - the parties meet once or twice to before mediation to try to resolve as many of the outstanding provisions as possible. ALP reiterated its belief that the parties could reach agreement on many, if not all, of the outstanding provisions. ALP suggested that to the extent the parties could

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not agree, we prepare an agreed upon statement of the outstanding issues to provide to the mediator in order to maximize the possibility of successful mediation.

On February 27, 2013, Mr. Mercado sent me an e-mail acknowledging receipt of ALP's letter of February 26th and stating, "We will follow up with you." Since that time, ALP has not heard anything from Mr. Mercado, Mr. Sakai or anyone else involved in labor negotiations. The City negotiating team has never bothered to respond to any of ALP's objections regarding premature advisory mediation. The City negotiating team has never bothered to respond to any of ALP's outstanding proposals.

Not having heard anything from any of the City's negotiating team members, I decided to inquire into the status of negotiations yesterday and was shocked to learn that the City's negotiating team still intended to move forward with mediation tomorrow.

The silence of the City's negotiating team in the face of ALP's correspondence is stunning. Aside from any legal issues, the conduct of the City's negotiating team is simply not the decent or right way for the City to treat its employees. There is no apparent downside to the City's negotiating team meeting with ALP once or twice before mediation to try to resolve the final outstanding issues. Moreover, the parties can hardly "negotiate" if the City's negotiating team does not respond to ALP proposals and provide reasons for its response when negative.

As the City Manager, we sincerely hope that you will reconsider this unproductive approach to negotiations with your workforce.

Sincerely,

ASSOCIATION OF LEGAL PROFESSIONALS



VERA M. I. TODOROV
President

cc (via email): Mayor and Council
Rick Doyle
Jennifer Schembri
Marco Mercado
Gary Messing
Charles Sakai

Mercado, Marco

From: Mercado, Marco
Sent: Tuesday, March 12, 2013 11:50 AM
To: Todorov, Vera
Cc: Schembri, Jennifer; 'Charles Sakai'; 'KGlenn.smcs@perb.ca.gov'
Subject: RE: City's Response to ALP's March 11th Letter
Sensitivity: Confidential

Hi Vera -

Thank you for your email. As we have previously indicated, we are scheduled to meet tomorrow morning, March 13, 2013, at 10:00 am with the mediator.

Thanks.

MARCO MERCADO
SENIOR EXECUTIVE ANALYST
CITY MANAGER'S OFFICE OF EMPLOYEE RELATIONS
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200 EAST SANTA CLARA STREET
SAN JOSE, CA 95113
(408) 535-8156 DIRECT
(408) 535-8150 MAIN
(408) 292-6436 FAX
WWW.SANJOSECA.GOV

From: Todorov, Vera
Sent: Monday, March 11, 2013 6:20 PM
To: 'Charles Sakai'
Cc: Mercado, Marco; KGlenn.smcs@perb.ca.gov; Schembri, Jennifer; Schwarzbach, Glenn; Mitchell, Carl; Donnelly, Ellen; Messing, Gary; Doyle, Richard; Moran, Ed; Frimann, Nora
Subject: RE: City's Response to ALP's March 11th Letter
Importance: High
Sensitivity: Confidential

Charles ~

Impasse, if there every was any, was broken long ago through continued negotiations between the City and ALP. Moreover, impasse is also premature given the City's failure to respond to ALP's previous communications and most recent proposals. During continuing negotiations, the parties were able to agree to resolution of a number of issues in Tentative Agreement 1 that would not otherwise likely have been resolved. Furthermore, it is the City that has expressed frustration with the negotiation process. ALP's communications with the City have consistently expressed a strong desire to continue negotiations.

The City's negotiation team has not replied to ALP's February 25 proposals (Tentative Agreements 2 and 3), which included proposed Tentative Agreement 2 containing numerous terms that were not objectionable to either party during negotiations. Your reference to the City's frustration over ALP's proposal on retiree healthcare is entirely misplaced given that ALP agrees in Section 4.1.3 of its proposed

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Tentative Agreement 3 to a reopener to continue the discussion of the retiree healthcare benefit that is made in response to the City's proposal for a reopener on this subject. ALP's reasons for its proposal on retiree healthcare are explained in proposed Tentative Agreement 3 (which has been made public on the City's website), and include the need to explore all possible solutions to the retiree healthcare situation rather than foreclosing such possibilities as the City's proposal would do.

Given that there are two outstanding tentative agreement proposals by ALP to the City, ALP is unable to determine what the outstanding issues are without any response to those proposals from the City. We believe that the remaining issues are limited to portions of those items in proposed Tentative Agreement 3, but ALP cannot begin to guess what the City's remaining issues are when we have had no response or input from the City on our proposals.

Since the request for mediation on Wednesday, March 13 was made solely by the City and was not mutually requested by the parties, we ask Mr. Glenn to set a phone conference for the parties to discuss the City's request. ALP is entitled to a memorandum of agreement rather than a mere term sheet. ALP is entitled to negotiate a package deal after weighing and balancing all of the terms of a proposed agreement. ALP sincerely desires to continue the collective bargaining process with the City to the point where we are able to agree upon most, if not all terms. Of course, we hope even more that we are able to reach an agreement on all issues.

Vera Todorov, President

Association of Legal Professionals ~ ALP

vera.todorov@sanjoseca.gov

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From: Charles Sakai [mailto:csakai@publiclawgroup.com]

Sent: Monday, March 11, 2013 5:28 PM

To: Todorov, Vera; Mercado, Marco

Cc: KGlenn.smcs@perb.ca.gov; Schembri, Jennifer; Schwarzbach, Glenn; Mitchell, Carl; Donnelly, Ellen; Messing, Gary

Subject: RE: City's Response to ALP's March 11th Letter

Sensitivity: Confidential

Vera –

As you know, the City declared impasse in these negotiations months ago because of the lack of progress and Mr. Glenn was appointed as mediator at that time. Since that time, the parties have made progress. However, ALP's recent regressive proposals on key City issues have made it clear to the City that we need the assistance of a third party at the bargaining table.

While you have indicated that you are "tired of hearing" how long negotiations are taking, the fact remains that we have been at the bargaining table for nearly a year and ALP's recent behavior seems designed to frustrate the bargaining process just as we near agreement on the major issues.

You have suggested that a statement of the outstanding issues would be helpful in mediation and we would be glad to review such a document if you would care to prepare one. If you would prefer that we do so, we will do our best to accommodate your request.

We look forward to seeing you Wednesday.

Charles

3/12/2013

Charles Sakai | Managing Partner
Renne Sloan Holtzman Sakai LLP | Public Law Group™
c: 415-299-0856

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From: Todorov, Vera [mailto:vera.todorov@sanjoseca.gov]
Sent: Monday, March 11, 2013 5:02 PM
To: Mercado, Marco
Cc: KGlenn.smcs@perb.ca.gov; Schembri, Jennifer; Charles Sakai; Schwarzbach, Glenn; Mitchell, Carl; Donnelly, Ellen; Messing, Gary
Subject: RE: City's Response to ALP's March 11th Letter
Sensitivity: Confidential

Hi Marco:

Neither party has declared impasse in negotiations. We are not mutually agreeable to mediation at this point -- even if merely advisory. The City asked ALP to "hold" the date for potential mediation, but failed to respond to ALP's requests to forego mediation and simply continue negotiations among ourselves for the last two weeks.

ALP is willing and able to bargain collectively over the remaining issues on our memorandum of agreement. The City and ALP have not exhausted the collective bargaining process.

As a result, by copy of this message we ask Mr. Glenn to hold off on mediation this coming Wednesday 3/13 until the parties have had the opportunity to further discuss remaining issues, and for any issues that may remain unresolved after that effort, to mutually prepare a statement of remaining issues for the mediator.

Sincerely,

Vera Todorov, President

Association of Legal Professionals ~ ALP

vera.todorov@sanjoseca.gov

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From: Mercado, Marco
Sent: Monday, March 11, 2013 4:49 PM
To: Todorov, Vera
Cc: 'KGlenn.smcs@perb.ca.gov'; Schembri, Jennifer; 'csakai@publiclawgroup.com'

3/12/2013

Subject: City's Response to ALP's March 11th Letter

Sensitivity: Confidential

Hi Vera –

Please see the attached.

<< File: CityLetterToALP-MediationDated03.11.13.pdf >>

Thank you.

MARCO MERCADO
SENIOR EXECUTIVE ANALYST
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